

Robert J. Hlivak
P.O. Box 938
Kaneohe, HI 96744
bob.hlivak@gmail.com
808-282-5474

RECEIVED
MAR 18 12 45 PM '09
CITY CLERK
HONOLULU, HAWAII

March 18, 2009

Testimony of Robert J. Hlivak
to the Council of the City and County of Honolulu
regarding
Proposed Bill 4 (2009) – Relating to the Use of Electronic Devices While Operating
Motor Vehicles

Mr. Chairman and members of the City Council, I thank you for the opportunity to testify. Although I support the intention of the ordinance to promote responsible and attentive driving habits I believe that Bill 4 is defective as written. The definition of a "mobile electronic device" is far too broad and will prohibit traditional, necessary, and useful private land mobile radio and citizen's radio operations that differ substantively from hand held use of a cellular telephone. I suggest that the Council consider language that targets the specific problems of cell phones, mobile texting, and electronic gaming. However, if the Council intends to proceed with the current language and definitions of the Bill, I ask that you consider adding amateur radio mobile operation to the list of exemptions in subsection (c).

I encourage the Council to review and consider modifying Bill 4 to use the language developed by the American Radio Relay League to assist in developing legislation such as the proposed Bill. I have attached a copy of the League's Policy Statement that contains the recommended language adopted by their Executive Committee on January 30, 2009. I have also attached a copy of the accompanying press release from the League that states:

'The ARRL recognizes that driver inattention is a leading cause of automobile accidents. The policy statement raises the fact that cell phones utilize full duplex communications -- where the user is talking and listening simultaneously. The Executive Committee statement says "Two-way radio use is dissimilar from full-duplex cellular telephone communications because the operator spends little time actually transmitting; the time spent listening is more similar to, and arguably less distracting than listening to a broadcast radio, CD or MP3 player. There are no distinctions to be made between or among Amateur Radio, public safety land mobile, private land mobile or citizen's radio in terms of driver distraction. All are distinguishable from mobile cellular telephone communications in this respect."

Mobile radio operation by radio amateurs long predates the cellular telephone revolution and amateur radio operators have a long history of safe operation. Furthermore, the public service activities and public service by amateur radio operators make this a better and safer community. Both the emergency management and civil defense operations of the City and the State support and encourage amateur radio activities and actively support and maintain radio repeaters that are used in the amateur radio mobile service.

I have personally witnessed the positive impact that amateur radio can have during emergencies. On Saturday, September 12, 1992, the morning after Hurricane Iniki devastated Kauai, I was asked to help with disaster communications to Kauai. I joined other radio amateurs operating on the only working communications link between Oahu and Kauai – a ham repeater sponsored by the Hawaiian Telephone Company employees. Working from a high site on the Waianae range the repeater supported radio amateurs that were able to “multi-task” many conversations on a single working channel because the “hams” had the experience and mobile radio equipment to make a difference. Communications between mobile units on Oahu permitted amateur radio operators here to coordinate with amateur radio operators on Kauai to assemble, transport, and deliver people and material for the relief of Kauai to rally points on Oahu.

The federal charter of the Amateur Radio Service encourages and promotes technical self-training and non-commercial communication service to the community, particularly with respect to emergency communications. Hams have always been involved in the advancement of radio technology and they provide a ready reservoir of trained operators, technicians, and electronics experts. Please consider modifying the language of Bill 4 to maintain amateur radio mobile operations by adding another part to subsection (c) that reads:

(c) The following persons shall be exempt from the provisions of subsection (a):

...

- (3) Currently licensed amateur radio operators using two-way radios in the Amateur Radio Service in accordance with Federal Communications Commission regulations.

Thank you.

American Radio Relay League Executive Committee Issues Mobile Amateur Radio Operation Policy Statement

On January 30, at the instruction of the Board of Directors at its January 2009 meeting, the ARRL Executive Committee adopted a policy statement on mobile Amateur Radio operations. The statement addresses the growing number of proposed state and local laws and ordinances regulating the use of cellular telephone and text messaging, inadvertently affecting Amateur Radio mobile communications.

In its statement, the Executive Committee urges state and municipal legislators to limit the scope of their proposals, limiting them to devices such as full duplex wireless telephones and related hand-held or portable equipment. Alternately, it suggests that licensed Amateur Radio operation be listed specifically as an exclusion to the proposed regulations.

"At the start of each new session, you see a flurry of this type of proposal in state legislatures across the country," said ARRL Regulatory Information Manager Dan Henderson, N1ND. As of February 1, 2009, Henderson said that the ARRL is aware of proposals in 11 states: Georgia, Hawaii Idaho, Illinois, Iowa, Maine, Montana, Texas, Utah, Virginia and Wyoming, as well as several local city or town proposals.

"These proposals are usually intended to regulate cellular telephone and text messaging by drivers as a matter of safety but, when they are written in very broad terms, can include Amateur Radio mobile operations in the 'net' they cast," Henderson continued. "The Executive Committee's policy statement gives a good, concise background of the role the Amateur Service plays in public safety and service communications. It also highlights the differences between communications conducted by cellular telephone and those using Amateur Radio. Finally, the statement offers some suggested statutory language for state motor vehicle codes which would protect Amateur Radio mobile operation."

The ARRL recognizes that driver inattention is a leading cause of automobile accidents. The policy statement raises the fact that cell phones utilize full duplex communications -- where the user is talking and listening simultaneously. The Executive Committee statement says "Two-way radio use is dissimilar from full-duplex cellular telephone communications because the operator spends little time actually transmitting; the time spent listening is more similar to, and arguably less distracting than listening to a broadcast radio, CD or MP3 player. There are no distinctions to be made between or among Amateur Radio, public safety land mobile, private land mobile or citizen's radio in terms of driver distraction. All are distinguishable from mobile cellular telephone communications in this respect."

The ARRL Policy Statement also recognizes the responsibility of the amateur community to conduct its activities in a manner that does not create unsafe operation of their motor vehicle. "Safety has to be a top concern at all times," Henderson concluded.

POLICY STATEMENT
of
ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO
Adopted by the ARRL Executive Committee, January 30, 2009

Mobile Amateur Radio Operation

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL) is the principal advocate for the interests of FCC-licensed Amateur Radio operators in the United States. Obtaining an FCC Amateur Radio license requires the passing of a written examination on regulations, operating practices, electronics theory, and safety. There are approximately 680,000 licensed Amateur Radio operators in the United States. Amateur Radio operators provide emergency and public service communications on a volunteer, uncompensated basis. Amateur Radio is an avocation, which is intended by the Federal Communications Commission to encourage and promote technical self-training, international goodwill, non-commercial communication service (particularly with respect to emergency communications), advancement of radio technology, and expansion of the existing reservoir of trained operators, technicians, and electronics experts. Amateur Radio operators are responsible for many advances in electronics and telecommunications technology over the past 100 years.

In the course of preparing for and conducting emergency, disaster and other public service communications, Amateur Radio operators routinely equip their motor vehicles with two-way radios, operated most often with hand-held microphones. The radios are typically installed in the vehicles and utilize fixed mounted speakers. Unlike cellular telephones, the speakers are not held to the face; the radios remain in the receive mode most of the time; transmissions typically are brief and infrequent. The microphone is held only when a transmission is being made or is imminent, and otherwise is stowed in a position where the operator can reach it without removing his or her eyes from the road. Amateur operators often conduct mobile communications as participants in networks of stations, controlled often by a fixed station, not unlike commercial dispatch mobile radio systems. Radio amateurs have regularly used mobile two-way radio systems for the past 70 years. The ARRL is aware of no evidence that such operation contributes to driver inattention. Quite the contrary: radio amateurs are public service-minded individuals who utilize their radio-equipped motor vehicles to assist others, and they are focused on driving in the execution of that function.

The States encourage mobile amateur radio operation as a public benefit. Every State issues license plates to motor vehicles of licensed radio amateurs showing their FCC-assigned call letters, in order to identify a particular vehicle as a mobile-radio equipped vehicle. The United States Congress, in 1994, in a Joint Resolution (S.J. Res. 90/H.J. Res. 199 (1994)), in "recognizing the achievements of radio amateurs, and to establish support for such amateurs as national policy" found and declared, among other things, that: "reasonable accommodation should be made for the effective operation of

amateur radio from residences, private vehicles and public areas, and that regulation at all levels of government should facilitate and encourage amateur radio operation as a public benefit.”

The ARRL acknowledges numerous and increasing instances of state legislative proposals (and occasionally municipal ordinance proposals) to curb the use of cellular telephones while operating motor vehicles, ranging from prohibitions on hand-held telephones to prohibitions on all forms of electronic devices. These statutory proposals would supplement the more generalized motor vehicle code requirements that exist in various forms in virtually all States, which require operators of motor vehicles to pay full time and attention to the operation of the vehicle while driving. ARRL understands that driver inattention is a leading cause of automobile accidents, and it is not unreasonable to be concerned about substantial distractions to drivers of motor vehicles.

Typically, the intention of this type of legislation is to prohibit the operation of cellular telephones specifically, and devices incorporating full duplex wireless telephones, while operating a motor vehicle. Some such statutes prohibit the use of such devices while driving unless they incorporate “hands-free” peripheral attachments. There is substantial variation in the definition of the devices regulated by the legislation. Often, the proposed statutory language broadly prohibits operation of “mobile communication devices” or “mobile electronic devices” while driving. Whether or not intentionally, some of these proposed statutes or ordinances would in fact, or could be interpreted to prohibit the operation of Amateur Radio equipment by drivers of motor vehicles. Often, there are exemptions to the general prohibition of mobile electronic or communication devices while driving. Some legislation specifically exempts devices that are operated on a hands-free basis. Other exemptions reference specific types of devices or radio services (such as public safety land mobile radio, Citizen’s Radio Service or business and industrial land mobile radio) which are not intended to be restricted. Some legislation specifically exempts licensed Amateur Radio mobile operation; some does not.

Amateur Radio mobile operation is ubiquitous, and Amateur Radio emergency and public service communications, and other organized Amateur Radio communications activities and networks necessitate operation of equipment while some licensees are driving motor vehicles. Two-way radio use is dissimilar from full-duplex cellular telephone communications because the operator spends little time actually transmitting; the time spent listening is more similar to, and arguably less distracting than, listening to a broadcast radio, CD or MP3 player. There are no distinctions to be made between or among Amateur Radio, public safety land mobile radio, private land mobile radio, or citizen’s radio in terms of driver distraction. All are distinguishable from mobile cellular telephone communications in this respect. Nevertheless, ARRL encourages licensees to conduct Amateur communications from motor vehicles in a manner that does not detract from the safe and attentive operation of a motor vehicle at all times.

Given the necessity of unrestricted mobile Amateur Radio communications in order for the benefits of Amateur Radio to the public to continue to be realized, ARRL urges state and municipal legislators considering restrictions on mobile cellular telephone

operation to (I) narrowly define the class of devices included in the regulation so that the class includes only full duplex wireless telephones and related hand-held or portable equipment as defined below; or alternatively (II) specifically identify licensed Amateur Radio operation as an excluded service.

Suggested statutory language for state motor vehicle codes follows:

(Definition)

“Cellular Telephone (or Mobile Communications/Electronic Device)” as used herein means hand held or portable electronic equipment capable of providing full duplex, wireless voice or data communications via the public switched telephone network between two or more people. Also included are devices for text messaging or paging, personal digital assistants, laptop computers, equipment capable of playing video games or video disks, or equipment on which digital photographs are taken or displayed.

(Prohibited Acts)

Section _____ **Use of cellular telephones or mobile communications/electronic devices prohibited.** No person shall use a cellular telephone (or mobile communications or electronic device) in any manner, including the reading or sending of text or electronic messages on the telephone, while operating a motor vehicle unless the telephone is specifically designed to allow hands-free operation and the telephone is so used. This section shall not apply to a person who is using the cellular telephone (or mobile communications/electronic device): (a) While the vehicle is lawfully parked; or (b) To contact or receive calls from an emergency response vehicle or agency.

(Exclusion)

A mobile (electronic/communication) device does *not* include audio equipment or any equipment installed in the vehicle to provide navigation or emergency information to the driver, or video entertainment exclusively to passengers in the back seat. Nor does it include two-way mobile radio transmitters or receivers used by licensees of the Federal Communications Commission in the Amateur Radio Service.

ARRL – the national association for Amateur Radio
225 Main Street
Newington, CT 06111
Regulatory Information Telephone: 860-594-0236
Fax: 860-594-0259
Contact: reginfo@arrl.org